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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

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COMMENTS OF TELEFONOS DE MEXICO, S.A. DE C.V.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUL - 9 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Rules and Policies on Foreign Participation)
in the U.S. Telecommunications Market)
_____)

IB Docket No. 97-142

COMMENTS OF TELEFONOS DE MEXICO, S.A. DE C.V.

Teléfonos de México, S.A. de C.V. ("Telmex") submits these Comments in response to the Commission's Notice of Proposed Rulemaking to revise the rules governing foreign carrier entry into the U.S. basic telecommunications services market in light of the recent World Trade Organization ("WTO") Basic Telecommunications Services Agreement. Telmex supports the Commission's proposal to abolish the effective competitive opportunities ("ECO") test adopted in the Foreign Carrier Entry Order¹ for carriers from WTO Member countries.² Eliminating barriers to entry will enhance competition in the U.S. and give U.S. consumers additional choices of service providers offering new and innovative telecommunications services. For the reasons set forth below, Telmex urges the Commission to adopt its proposal, while ensuring that any new restrictions on the entry of carriers from WTO Member countries are no more burdensome than necessary to fulfill the Commission's procompetitive goals.

¹ Market Entry and Regulation of Foreign-Affiliated Entities, Report and Order, 11 FCC Rcd 3873 (1995) ("Foreign Carrier Entry Order"), reconsideration pending.

² Because Telmex is a carrier in Mexico, a WTO Member country, Telmex limits its Comments to the Commission's proposals with respect to the entry of affiliates of carriers from WTO Member countries. Telmex does not address in these Comments the Commission's proposals with respect to the treatment of foreign affiliates of carriers from non-WTO Member countries.

INTRODUCTION AND SUMMARY

Telmex provides local and long distance service throughout Mexico. Since Telmex's 1990 privatization, and particularly since the June 1995 enactment of Mexico's Federal Telecommunications Law, the Mexican Government, through the Secretaría de Comunicaciones ("SCT") and the Comisión Federal de Telecomunicaciones ("Cofetel"), has pursued an aggressive and irreversible procompetitive policy, introducing facilities-based long distance competition in January 1997. As a result, approximately 80% of the telephone lines in Mexico -- including all of the lines in the 60 largest cities in the country -- already are presubscribed to Telmex or one of several other facilities-based long distance concessionaires, such as the AT&T-affiliated Alestra, the MCI-affiliated Avantel, and the Bell Atlantic-controlled Iusatel.³ Moreover, all Mexicans anywhere in the country will be able to "dial-around" to any authorized long distance carrier beginning in September 1997. In fact, competition has been so intense in Mexico that Telmex already has lost approximately 20-30% of the Mexican long distance market to its U.S.-affiliated competitors.

In order to compete effectively with its U.S.-affiliated competitors on both sides of the border, Telmex has formed a joint venture with Sprint Corporation. On February 27, 1997 -- less than two weeks after the conclusion of the WTO Agreement -- Telmex/Sprint Communications, L.L.C. ("TSC") filed a Section 214 application requesting authority to provide

³ See "Telefónicas, a pagar 422 mdd a Telmex por interconexiones," El Financiero, June 3, 1997, at 10 (noting the observations of both Carlos Casasús, President of Cofetel, and Jorge Escalona, Alestra-AT&T's President and Director General, that the 60.64% response rate achieved in the Mexican presubscription process has not been achieved in any other country that has undergone a presubscription process, and particularly not in such a short time frame).

global international switched resale services between the U.S. and international points, including Mexico.⁴ TSC's application has remained pending while several of its would-be U.S. competitors have urged the Commission to undertake a detailed ECO analysis entailing rigorous scrutiny of the decisions of Mexico's regulatory authorities and a time-consuming, fact-specific review of the state of Mexico's telecommunications market.

As the Commission correctly recognizes in the Notice,⁵ such a detailed review is no longer appropriate in light of the WTO Agreement. Rather, the U.S. WTO commitments require the Commission to abolish the ECO test for carriers from WTO Member countries. Telmex therefore welcomes the Commission's proposal to eliminate the ECO test for those carriers and believes that, in so doing, the Commission will give U.S. consumers more choices in the provision of telecommunications services, encourage other countries to open their markets, and promote greater U.S. and global competition. To the extent that competitive safeguards restricting U.S. entry are necessary, the Commission should impose them sparingly. Indeed, in view of the importance of its WTO commitments, the Commission should serve as a role model to other countries by immediately implementing its new open market policy, or at least applying its ECO test more flexibly to enhance competition now.

I. THE COMMISSION SHOULD ADOPT ITS PROPOSAL TO ELIMINATE THE ECO TEST.

Telmex supports the Commission's proposal to eliminate the ECO test for carriers from WTO Member countries seeking to provide international services in the U.S. Not only

⁴ See Application of Telmex/Sprint Communications, L.L.C., FCC File No. ITC-97-127 (filed Feb. 27, 1997).

⁵ See Notice at ¶¶ 5, 34.

does the WTO Agreement require the Commission to adopt an open market policy, but the implementation of that policy will promote the Commission's procompetitive goals, benefit U.S. consumers, and thus serve the U.S. public interest. Any remaining restrictions on foreign carrier entry therefore must be the least burdensome necessary to safeguard the U.S. market from actual anticompetitive conduct.⁶

Abolishing the ECO test will have important advantages. As the Commission recognizes, eliminating barriers to entry will enhance competition in the U.S. by giving U.S. consumers additional choices of service providers offering new and innovative services.⁷ At a time when at least 68 other countries are proposing to open their international services markets to foreign competition, the removal of barriers to entry in the U.S. in turn will promote greater competition on a global scale. Moreover, by promptly eliminating the ECO test, the Commission will set an example for other countries preparing to implement their own WTO commitments, further ensuring that those countries take their WTO commitments equally seriously.

Significantly, the Commission's proposal also will reduce the administrative burdens that the ECO test imposes and lessen the intrusiveness of the Commission's entry policy on foreign administrations. As the Commission explains, the ECO test's "fact-specific, detailed reviews of competitive conditions on particular bilateral international telecommunications routes . . . require substantial commitments of time and resources by both private parties and the Commission that may no longer be necessary in the competitive environment that will exist once

⁶ See *id.* at ¶¶ 78, 109.

⁷ See, e.g., *id.* at ¶¶ 25, 30.

the WTO commitments take effect.”⁸ The Commission correctly concludes that the fact that governments representing the vast majority of the world’s market for basic telecommunications services have firmly committed to opening their markets should “provide a meaningful check” on foreign carriers’ exercise of market power.⁹

To be sure, there still may be instances where foreign administrations’ market-opening commitments do not sufficiently limit a foreign carrier’s exercise of its market power. While the Reference Paper on Procompetitive Regulatory Principles may allow the U.S. to take “[a]ppropriate measures . . . for the purpose of preventing suppliers who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices,”¹⁰ this power clearly does not allow the Commission to deny entry to a foreign carrier from a WTO member country. The Commission’s proposals to enable petitioners to rebut the presumption of entry¹¹ and to allow the Commission to impose “supplemental dominant carrier safeguards”¹² and other restrictions and sanctions¹³ on foreign-affiliated carriers similarly are sanctions that, if

⁸ Id. at ¶ 34.

⁹ See id. at ¶ 31.

¹⁰ See Reference Paper on Pro-Competitive Regulatory Principles, ¶ 1.1 (Attachment to the United States Conditional Offer in Basic Telecommunications Services).

¹¹ See, e.g., Notice at ¶¶ 32, 45, 150-151.

¹² See, e.g., id. at ¶¶ 104-110. Telmex notes that the proposed supplemental dominant carrier safeguards would be inapplicable to TSC because Mexico “has eliminated legal barriers to international facilities-based competition and has authorized multiple international facilities-based competitors to compete with the incumbent carrier.” Id. at ¶ 104.

¹³ See, e.g., id. at ¶ 111 (structural separation requirement), ¶¶ 114-118 (“no special concessions” requirement), ¶¶ 122-123 (alternative competitive safeguards). Telmex notes that the proposed prohibition against certain special concessions may be overly restrictive. While the Commission proposes to prohibit carriers subject to supplemental dominant carrier regulation “from entering into an exclusive arrangement with the affiliated foreign carrier for the joint marketing of basic telecommunications services, the steering of customers by the foreign carrier to the U.S. carrier,

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misapplied, could have adverse competitive effects. In all events, the Commission must be especially careful not to allow its proposed exceptions to unrestricted market entry to undermine the general open market rule. By retaining the authority to engage in “fact-specific, detailed reviews”¹⁴ of issues such as a foreign carrier’s conduct in its home market¹⁵ and the extent of facilities-based competition there¹⁶ in reviewing Section 214 applications, including applications from resale applicants,¹⁷ the Commission runs the risk of unintentionally undermining its open market commitments.

Telmex therefore urges the Commission to ensure that determinations to impose competitive safeguards entail substantial deference to foreign administrations’ regulatory decisions on the implementation of their own WTO commitments. After all, only the particular foreign administration is in a position to determine how best to introduce competition in light of the country’s unique economic and social needs. Particularly in view of the binding nature of countries’ WTO commitments and the Commission’s own tentative conclusion to rely on the WTO dispute resolution procedure in the event of a WTO Member’s anticompetitive conduct,¹⁸

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or the use of foreign market telephone customer information,” *id.* at ¶ 105, the Commission elsewhere appears to prohibit “one-stop shopping” agreements between a U.S. carrier and a foreign carrier with market power in the destination country, regardless of whether the U.S. carrier is subject to supplemental dominant safeguards, *see id.* at ¶¶ 115-118.

¹⁴ *Id.* at ¶ 34.

¹⁵ *See id.* at ¶ 41.

¹⁶ *See id.* at ¶¶ 84, 104, 136.

¹⁷ *Cf. id.* at ¶ 31 (noting that “we also continue to believe that the resale of international switched services by a U.S. carrier whose foreign affiliate has market power in the destination country does not present a substantial possibility of anticompetitive conduct in the U.S. international services market.”).

¹⁸ *See id.* at ¶¶ 23-24, 37.

deference to foreign administrations' decisions on how to implement their WTO commitments is appropriate and would help alleviate some of the concerns that may be raised as a result of the Commission's imposition of competitive safeguards.

In short, the Commission clearly is "on the right track" in proposing to abolish the ECO test. To minimize the risk of undermining the new open market policy, however, the Commission should ensure that any competitive safeguards that it imposes are the least restrictive means necessary to fulfill the Commission's procompetitive goals.

II. THE COMMISSION SHOULD NOT TIE U.S. ENTRY TO FOREIGN CARRIERS' COMPLIANCE WITH BENCHMARK ACCOUNTING RATES.

One of the key competitive safeguards that the Commission would impose is the proposal to tie U.S. entry to compliance with benchmark accounting rates.¹⁹ In the Benchmark Proceeding, Telmex submitted comments opposing this proposal.²⁰ Particularly with respect to carriers from WTO Member countries, the Commission should apply a flexible approach that, by encouraging greater competition, necessarily will lead to further accounting rate reductions.

Telmex again urges the Commission to continue to follow a flexible policy that encourages U.S. carriers to base bilateral settlement rate negotiations on each country's unique circumstances.²¹ The case of Mexico illustrates the importance of such a market-oriented policy.

¹⁹ See, e.g., *id.* at ¶¶ 8, 33, 38, 109, 119-121.

²⁰ See Comments of Teléfonos de México, S.A. de C.V. (Feb. 7, 1997), in International Settlement Rates, Notice of Proposed Rulemaking, IB Docket No. 96-261, FCC 96-484 (Dec. 19, 1996).

²¹ See, e.g., Regulation of International Accounting Rates, Fourth Report and Order, FCC 96-459, Docket No. CC 90-337 Phase II, at ¶ 26 (released Dec. 3, 1996) (reasoning that "a more flexible framework that allows for relaxing regulatory rules and removing entry barriers will best support the development of competitive market structures and deliver the benefits of such structures to consumers."), reconsideration pending; Policy Statement on International Accounting Rate Reform, 11 FCC Rcd 3146, 3149 (1996) (stating that "[w]e believe our approach to accounting

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The development of Mexico's market has led not only to the rapid introduction of competition, but also to substantial accounting rate reductions. Over the last decade, Telmex has reduced the average settlement rate for southbound traffic from \$0.980 per minute in 1988 to \$0.395 per minute in 1997, for a decrease of over 60%. Over the same period, the rate that Mexican carriers pay to U.S. carriers to terminate traffic in the U.S. has increased by almost 36% from \$0.291 per minute to \$0.395 per minute, reaching "parity" with the southbound rate.²²

In contrast, the use of benchmark accounting rates will not necessarily achieve the results that the Commission seeks. By imposing U.S. pricing policies on other governments and non-U.S. carriers, the Commission effectively would supersede bilateral negotiations between U.S. and foreign carriers, override foreign administration's regulatory policies, and affect foreign carriers' pricing structures. Foreign administrations that view the proposal as an attempt to impose a U.S. policy extraterritorially could respond by imposing burdensome obligations on U.S. carriers seeking to compete there or, as the Commission itself proposes here, by barring U.S. carriers from the country's market altogether. This result is exactly the opposite of what the U.S. Government sought to achieve with the WTO Agreement, and exactly the opposite of what a more flexible policy could achieve.

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rates should be flexible enough to recognize different market conditions throughout the world.") (footnote omitted).

²² The current settlement rate agreements between Telmex and its U.S. correspondents expire at the end of 1997. Telmex accordingly has initiated negotiations with the U.S. carriers to set 1998 settlement rates. Those discussions are ongoing.

The real solution to high settlement rates is not to close the U.S. market, but to allow foreign carriers access to the U.S. market and to encourage foreign governments to allow U.S. carriers to compete abroad as well. The Commission has made clear that “[i]ncreased U.S.-outbound traffic should make foreign carriers more amenable to further reducing accounting rates in that they will experience less of a loss in net settlement revenues, thus reducing the per-minute settlement burden on U.S. consumers.”²³ The WTO Agreement envisions such a policy. Flexible accounting rate policies will enhance competition, lead to lower accounting rates, and thus help fulfill the goals of the WTO Agreement.

III. THE COMMISSION SHOULD EVALUATE AND PROMPTLY GRANT PENDING SECTION 214 APPLICATIONS UNDER A FLEXIBLE POLICY THAT IS CONSISTENT WITH THE NOTICE AND THE WTO AGREEMENT.

While Telmex supports the Commission’s tentative conclusion to resolve all Section 214 applications pending on the effective date of the order in this proceeding under the new entry policy to be adopted in this proceeding,²⁴ Telmex also urges the Commission not to delay or defer granting pending applications filed by carriers from WTO Member countries, such as TSC’s application to resell switched services, until the conclusion of this proceeding. Rather, the Commission should promptly grant those applications under an interpretation of its foreign carrier entry policy that takes into account both the Notice and the U.S. WTO commitments.

In similar cases of impending rule changes, the Commission has given parties with pending applications the benefit of its likely new rules while it continues to fine-tune the

²³ Telecom New Zealand Limited, DA 96-2182, FCC File No. I-T-C-96-097, at ¶ 39 (released Dec. 31, 1996).

²⁴ See Notice at ¶ 44.

details of those policies.²⁵ Such a result is amply warranted here. The Commission must have its new foreign carrier entry policy in place in less than six months. Rather than continue during this short period of time to use valuable administrative resources to undertake the burdensome ECO reviews that the Commission acknowledges are no longer warranted for WTO Member countries,²⁶ the Commission should take advantage of an important opportunity to show other countries preparing to implement their own commitments that it stands by its commitments and expects other countries to do the same.

At a minimum, the Commission should continue to consider WTO membership as a critical public interest factor in applying a more relaxed version of the ECO test. In other cases decided since the WTO Agreement, the Commission consistently has concluded that countries' WTO commitments constitute "important public interest factors" supporting grant of applications under the ECO test.²⁷ Short of immediate implementation of its new open market

²⁵ See, e.g., Hughes Communications Galaxy, Inc., 10 FCC Rcd 10947 (1995) (granting a satellite operator authority to use a satellite to provide service to both the U.S. and Latin America pending review of a Commission proposal to treat all U.S.-licensed FSS satellites under a unified regulatory regime in which they can provide a full range of domestic and international services anywhere within their coverage areas without the need to obtain additional satellite authorizations from the Commission).

²⁶ See Notice at ¶ 34.

²⁷ See, e.g., APC PCS d/b/a American Personal Communications, Petition for Declaratory Ruling Concerning Section 310(b)(4) of the Communications Act of 1934, Declaratory Ruling and Order, FCC File No. ISP-97-001, at ¶ 21 (released May 16, 1997); MAP Mobile Communications, Inc., Petition for Determination of the Public Interest Under 47 U.S.C. Section 310(b)(4) To Permit Narrowband PCS and Additional CMRS Paging Licensing, Order, FCC File No. ISP-96-008, at ¶ 24 (released May 16, 1997); see also NextWave Personal Communications, Inc., Request for Temporary Waiver of Indirect Alien Ownership Limits, Order, FCC File Nos. 00341CWL96 et al., at ¶ 12 (released May 16, 1997) (concluding that, because the WTO Agreement may result in modification of the foreign ownership rules for Title III common carrier licensees, the public interest was served by extending NextWave's deadline for restructuring its foreign ownership levels until 90 days after the new foreign carrier entry rules take effect).

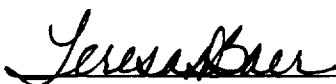
policy, following this precedent will go a long way towards promoting greater U.S. and global competition in the provision of basic telecommunications services.

CONCLUSION

For the foregoing reasons, the Commission should eliminate the ECO test with respect to carriers from WTO Member countries, and otherwise adopt rules consistent with these Comments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this 9th day of July, 1997, caused copies of the foregoing "Comments of Teléfonos de México, S.A. de C.V." to be served by hand delivery on the following:

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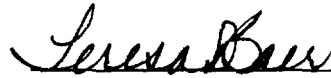
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A handwritten signature in cursive script, reading "Teresa D. Baer", written in black ink.

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